

Message Text

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ACTION L-03

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FM AMEMBASSY BRASILIA

TO SECSTATE WASHDC NIACT IMMEDIATE 5768

INFO DEA HQS WASHDC NIACT IMMEDIATE

DEPARTMENT OF JUSTICE NIACT IMMEDIATE

AMEMBASSY CARACAS

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STATE FOR L MR. T. TELLARICO: JUSTICE FOR MR. MURRAY:
DEA FOR MR.STRICKLER

E.O.11652: N/A

TAGS: SNAR, BR

SUBJECT: EXTRADITION OF FRANCISCO ULISES SCOCOZZA-VALIENTE

REF: A. BRASILIA 7386

B. TELECON TELLARICO-ASENCIO OF SEPT. 27, 1974

1. AARTICLE 10 PARAGRAPH 2 OF DECREE LAW 394 OF 1938
NOW SUPERSEDED BY ARTICLE 95 PARAGRAPH 4 OF DECREE
LAW 941 OF OCT. 13, 1969. LATTER CEDREE, HOWEVER,
CONTAINS SIMILAR LANGUAGE TO THAT OF DECREE LAW
394.

2. EMBASSY CONSULTED WITH DR. REZEK OF ATTORNEY
GENERAL'S STAFF WHO PREPARED OPINION ON SUBJECT
EXTRADITION CASE FOR SUPREME COURT. REZEK STATED
THAT ATTORNEY GENERAL DID NOT TAKE ADVANTAGE OF PRO-
VISIONS OF ABOVE DECREE TO CONVERT JUDGEMENT INTO
PROCEEDINGS WITH LIMIT OF 45 DAYS FOR FOLLOWING REASON:

A) SUBJECT PROVISIONS ARE USUALLY APPLIED WHEN
THERE IS SOME FLAW IN THE EXTRADITION REQUEST SUCH
AS A TECHNICAL ERROR OR A MISSING DOCUMENT. IN THIS
CASEOUR EXTRADITION REQUEST WAS FLAWLESS AND ALL
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PROVISIONS OF THE TREATY AND OF BRAZILIAN LAW WERE

MET.

B) THE ATTORNEY GENERAL'S OPINION GOES TO THE MERITS OF THE CASE AND SPECIFICALLY TO THE ISSUE OF THE IDENTITY OF THE DEFENDENT. IT WAS THE ATTORNEY GENERAL'S VIEW THAT THE ONLY INCONTROVERTIBLE WAY IN WHICH WE COULD PROVE THAT THE DEFENDANT WAS THE INDIVIDUAL REQUESTED FOR EXTRADITION WAS BY OFFERING FINGERPRINTS TAKEN IN THE U.S. SINCE THESE WERE NOT AVAILABLE ANY OTHER ELEMENTS OF PROOF, IN HIS OPINION, WOULD STILL LEAVE A DOUBT.

C) THE ATTORNEY GENERAL ALSO SUSTAINED THE DEFENSE COUNSEL'S ARGUMENT THAT THE CRIME OF CONSPIRACY WAS NOT RECOGNIZED IN BRAZILIAN JURISPRUDENCE. EVEN IF IT COULD BE EQUATED WITH THE BRAZILIAN LAW ON A "CRIME COMMITTED BY A GANG OR BAND" SUCH A CRIME WOULD HAVE OCCURRED IN URUGUAY. THIS IS A NEW ELEMENT IN THE CASE NOT PREVIOUSLY KNOWN TO THE EMBASSY AND AN INFORMAL TRANSLATION OF THE ATTORNEY GENERAL'S OPINION IS BEING TRANSMITTED BY SEPTTEL.

3. IT WAS REZEK'S PERSONAL OPINION THAT THE ONLY COURSE OPEN TO THE EMBASSY WAS TO HIRE AN ATTORNEY TO REPRESENT THE USG IN THE CASE IN ORDER TO PRESENT ADDITIONAL PROOFS AND ARGUMENTS TO THE MEMBERS OF THE COURT. THE ATTORNEY GENERAL'S WRITTEN OPINION TO THE COURT LEFT NO OTHER VIABLE COURSE OF ACTION.

4. EMBASSY PROPOSES WITH APPROPRIATE AUTHORIZATION OF WASHINGTON AGENCIES TO CONTRACT SERVICES OF DR. ROLF PEIPER, ED. CASA DE SAO PAULO-CONJ. 1307, BRASILIA. PEIPER RECEIVED HIS LAW DEGREE FROM THE LAW FACULTY OF GOIAS STATE UNIVERSITY, AND IS WELL KNOWN LOCAL ATTORNEY ON RETAINER TO USAID MISSION AND USIS AND HAS PERFORMED NUMEROUS LEGAL SERVICES FOR VARIOUS ELEMENTS OF THE EMBASSY OVER THE PAST 6 YEARS. HE HAS BEEN REPRESENTING AUSTRALIAN EMBASSY BEFORE SUPREME COURT ON COMPLICATED EXTRADITION CASE AND HE APPEARS TO BE THE MOST LOGICAL CANDIDATE FOR THE JOB. HIS FEE OF \$5,000 IS IDENTICAL TO THAT CHARGED THE AUSTRALIAN EMBASSY AND A QUICK CHECK WITH VARIOUS KNOWLEDGEABLE SOURCES INDICATED TAHT LIMITED OFFICIAL USE

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FEE IS NOT UNREASONABLE. HE DOES NOT WORK ON HOURLY BASIS.

5. AS DEPARTMENT AND OTHER WASHINGTON AGENCIES AWARE, DEFENSE COUNSEL IS PRESSING FOR EARLY JUDGMENT IN THIS CASE AND RECENT INFORMATION IS THT HEARING COULD BE AS EARLY AS TUESDAY, OCT. 1. THE EMBASSY WISHES TO MAKE THE POINT THAT THE INFORMATION CONTAINED IN PARAGRAPH 2 AND 3 IS FROM THE "ENEMY" AND SHOULD NOT

NECESSARILY BE ACCEPTED AS CONCLUSIVE. THIS IS NOT TO
SAY THAT THE CASE WILL BE WON EASILY. HOWEVER,
THE PROPOSED ATTORNEY IS COMPETENT. THE COURT'S
RAPPORTEUR IS FRIENDLY TO THE EMBASSY AND
CAN BE EXPECTED TO DO EVERYTHING LEGALLY POSSIBLE TO
MEET OUR REQUIREMENTS AND A NUMBER OF OTHER JUSTICES
CAN ALSO BE EXPECTED TO BE SYMPATHETIC TO OUR POINT
OF VIEW. WE RE-ITERATE OUR RECOMMENDATION THAT
WE BE AUTHORIZED TO CONTRACT THE SERVICES OF AN
ATTORNEY SOONEST.
CRIMMINS

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